



Attorney General
Betty D. Montgomery

November 18, 1996

Via Overnight Mail

Office of the Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D. C. 20554


Re: *In the Matter of Implementation of
the Local Competition Provisions
in the Telecommunications Act of
1996, CC Docket No. 96-98*

Dear Mr. Caton:

Enclosed please find the original and twenty copies of the **Opposition and Comments** in the above-referenced matter. Please return a time-stamped copy to me in the enclosed stamped, self-addressed envelope.

Thank you for your assistance in this matter.

Respectfully submitted,


STEVEN T. NOURSE
Assistant Attorney General
Public Utilities Section
180 East Broad Street
Columbus, Ohio 43266-0573
(614) 466-4397

STN/kja

Enclosure

cc: Janice Myles, Common Carrier Bureau
International Transcription Services, Inc.

Noted by [unclear] 0420
11/20/96



**Attorney General
Betty D. Montgomery**

November 18, 1996

Via Overnight Mail

Office of the Secretary
Federal Communications Commission
Common Carrier Bureau
1919 M Street, N.W., Room 544
Washington, D. C. 20554

Re: *In the Matter of Implementation of
the Local Competition Provisions
in the Telecommunications Act of
1996, CC Docket No. 96-98*

Dear Ms. Myles:

Enclosed please find four copies of the **Opposition and Comments** in the above-referenced matter, and a diskette containing this document.

Thank you for your assistance in this matter.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Steven T. Nourse".

STEVEN T. NOURSE
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Enclosure

cc: Office of the Secretary, William F. Caton
International Transcription Services, Inc.

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Implementation of the Local)	CC Docket No. 96-98
Competition Provisions in the)	
Telecommunications Act of 1996)	

**THE PUBLIC UTILITIES COMMISSION OF OHIO'S
OPPOSITION AND COMMENT
TO PETITIONS FOR RECONSIDERATION OF THE
SECOND REPORT AND ORDER**

I. INTRODUCTION

On August 8, 1996, the Federal Communications Commission ("FCC" or "Commission") issued its Second Report and Order ("Second R/O") in this docket addressing issues of Dialing Parity, Non-Discriminatory Access to Telephone Numbers and Directory Assistance, Network Disclosure and Numbering Administration. Several Petitions for Reconsideration were filed seeking to challenge or clarify the Commission's Second R/O, and public notice of those petitions was published on November 5, 1996. The Public Utilities Commission of Ohio ("PUCO") hereby respectfully submits this Opposition and Comment in response to portions of the Petitions for Reconsideration of Ameritech, GTE, MFS and TCG.

II. DISCUSSION

AMERITECH Petition for Reconsideration (Scope of Dialing Parity Duty and Non-Discriminatory Access)

Ameritech requests that the FCC reconsider its decision to interpret Section 251(b)(3) as imposing an obligation on LECs to provide dialing parity to those competitors who provide *either* telephone exchange service or telephone toll service. Ameritech Petition at 3. Ameritech argues that the 1996 Act only requires the provision of dialing parity to competing LECs that provide *both* telephone toll and exchange service. *Id.* Ameritech claims that the Act calls for dialing parity only as between competing LECs. The PUCO urges the Commission to uphold its conclusion that Section 251(b)(3) requires the provision of dialing parity to competing providers of local exchange service or toll service, as that interpretation is the most logical and pro-competitive meaning of the statute.

Ameritech advocates only providing dialing parity to carriers that offer *both* exchange and toll services, while arguing that this interpretation is narrowly-tailored to meet the purported purpose of the provision: to address "local dialing parity between local exchange carriers." Ameritech Petition at 4. Of course, Ameritech's construction of Section 251(b)(3) would only address dialing parity between ILECs and new entrants who are providers of both local and long distance service, not dialing parity between two strictly local providers. In other words, Ameritech's restrictive interpretation would only provide for dialing parity to a subgroup of LECs and not among all LECs. Ameritech's interpretation also happens to be the most restrictive and self-serving construction.

From a broader public policy perspective, a competitive carrier who enters the market to provide only toll or only local service should not be denied dialing parity. Moreover, that interpretation is a reasonable one when viewed in the context of the entire dialing parity provision contained within Section 251(b)(3). That provision

imposes "[t]he duty to provide dialing parity to competing providers of telephone exchange service and telephone toll service" Thus, Congress imposed the duty to provide dialing parity to competing providers of telephone exchange service and providers of telephone toll service. The "and" clearly compounds the duty to provide dialing parity to competing providers. The "and" does not impose an additional condition on the duty or narrow the class of competing providers to which the duty is owed, as Ameritech suggests. If Congress had intended to limit the duty to provide dialing parity, it would have done so unambiguously. It did not so provide, and the FCC should uphold its original interpretation of this provision.

Ameritech also argues that the "nondiscriminatory access" requirement of Section 251(b)(3) does not mandate that access provided to competing providers be at least equal in quality to that which a LEC provides to itself. Ameritech Petition at 7. Ameritech claims that FCC should only mandate access that is nondiscriminatory among telecommunications carriers (not between self-treatment and external treatment). Strictly from a perspective of economic self-interest and preservation, the ILEC has a natural incentive to effectuate a preference for itself and create any possible advantage for itself to the exclusion of *all* others (versus discriminating between the treatment of various carriers). In other words, the most obvious temptation for any LEC in this regard is to discriminate against all other carriers in favor of itself. Congress realized this fact when it prohibited discrimination in Section 251(b)(3) --not just for ILECs but for all LECs. Requiring non-discriminatory access of a quality anything less than what the LEC provides itself is unreasonable, discriminatory and potentially anti-competitive.

GTE Petition for Reconsideration (Dialing Parity)

The PUCO is opposed to GTE's suggestion that a LEC could be permitted to withdrawal its plan, once it is approved by the state commission. GTE Petition at 12. Any such allowance would make any dialing plan conversion schedule virtually

meaningless. As long as the ILEC can withdraw the plan, there is no real commitment on the part of the ILEC. Neither is there any real measure by which the state commissions or the FCC can determine compliance.

MFS and TCG Petitions for Reconsideration (Overlay Plan/ NPA-NXX Assignment)

MFS urges the Commission to require that new entrants be assigned all the remaining NPA-NXX pairs whenever an overlay is required, in order to reduce anti-competitive impact of NPA overlay plans. MFS Petition at 9. Similarly, TCG recommends that the FCC prohibit NPA overlays unless each certificated carrier has sufficient NXXs from the existing NPA to service its entire service territory. TCG Petition at 7. The PUCO submits that, although the FCC's "one NXX per LEC" approach may not be adequately pro-competitive, the approach recommended by MFS and TCG is extreme and should be rejected. A middle ground should be reached.

MFS' suggestion that *all* remaining NXXs be given to NECs where an overlay plan is implemented is unfair and impractical. Although the FCC's "one NXX per LEC" may be unfair, MFS' recommendation goes to the other extreme. Any NXX division should be fair between ILECs and LECs, and ILEC customers should not suffer any more than LEC customers. Ensuring that new LECs are assigned NXX codes does mitigate dialing parity concerns, but it must be done in an equitable manner and should remain focused upon the customers who these regulations are designed to serve.

There will need to be discretion for states to divide the available NXX codes among the customers of the new entrants and the ILEC. The FCC should refrain from issuing detailed guidelines on these issues, given that the FCC has already acknowledged that the states have primary responsibility over numbering plans. Instead, the FCC should simply require that NXX codes be equitably split among all new entrants and ILEC customers and recognize that states are best positioned to

perform this task in the context of approving NPA plans. In the Second Report and Order, the FCC has already recognized state authority to regulate and approve the NPA plans. Second R/O at ¶¶ 312-319. States should make the decisions based on the circumstances presented in each case, in conjunction with the FCC's broad-based findings. In any case, the FCC should decline to adopt the type of inflexible requirements suggested by MFS and TCG.

III. CONCLUSION

Accordingly, the PUCO respectfully requests that the FCC affirm and clarify its Second Report and Order in accordance with the foregoing discussion.

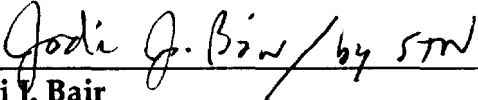
Respectfully submitted,

Betty D. Montgomery
Attorney General Of Ohio

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Section Chief



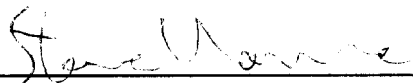
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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing **OPPOSITION AND COMMENT TO PETITIONS FOR RECONSIDERATION OF THE SECOND REPORT AND ORDER** was served by regular U.S. mail, postage prepaid, or hand-delivered, upon the following parties of record, this 18th day of November, 1996.



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